

CHAPTER 44

STATE COMPTROLLER

SUBCHAPTER 1. OFFICE OF THE STATE COMPTROLLER

17:44-1.1 Purpose and scope

(a) The rules in this chapter set forth the organization and function of OSC, explain the audit process and specify the documents and information required of contracting units subject to contract review.

(b) The provisions of this chapter apply to all covered entities and contracting units as defined in N.J.A.C.

17:44-1.2.

17:44-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Bid protest” means any written challenge to a contract specification, to a bid for a contract or to a contract award.

“Contract” means an agreement supported by consideration and enforceable at law. Examples include, but are not limited to: purchases of goods or services, leases, concession agreements, agreements for sale, loan agreements, agreements with entities to indemnify or insure, agreements to join certain shared service agreements including joint insurance funds, brokerage agreements, land transactions (excluding land condemnations), certain memoranda of understanding, grants supported by consideration, purchase orders and third party contracts.

“Contract partner” means any contractor, vendor, lessee or lessor, buyer or seller, concessionaire, grantee or other party to a contract.

“Contracting unit” means any entity subject to contract review pursuant to N.J.S.A. 52:15C-10. Contracting units include, but are not limited to: the principal departments in the Executive Branch of State government, any independent State authority, commission, instrumentality and agency and any State or county college or university and any unit of local government including, but not limited to, a county, municipality and board of education. The definition also includes any board, commission, committee, authority or agency that such entities have created or to which the entities have delegated any power to enter into contracts. For example, if any covered entity has created a non-profit corporation that exercises

delegated powers to enter into a contract, the non-profit corporation shall comply with these regulations when exercising delegated powers.

“Cooperative purchasing agreement” means the extension of a contract entered into by a contracting unit for the use and benefit of other contracting units, such as pursuant to N.J.S.A. 52:34-6.2 or 40A:11-11(6).

“Covered entity” means any entity subject to audit pursuant to N.J.S.A. 52:15C-8 and includes, but is not limited to: all units in the Executive Branch of State government and any entity exercising executive branch authority, public institution of higher education, independent State authority, unit of local government and board of education.

“Emergency procurement” means a contract entered into under an emergency condition that is a threat to public health, welfare or safety.

“Evaluation committee” means those persons appointed to evaluate the merits of a response to a solicitation for bid, request for proposals (RFP), request for qualifications (RFQ), expression of interest (EOI) or other competitive solicitation for a contract when the formation of such a committee is required by the procurement process, by law, regulation, Executive Order or internal operating procedure of the contracting unit.

“OSC” means the New Jersey Office of the State Comptroller.

“Performance audit” means an audit conducted in accordance with Generally Accepted Government Auditing Standards issued by the U.S. Government Accountability Office to evaluate the performance and operations of a covered entity, reduce costs and facilitate decision making by parties with the responsibility to oversee or initiate corrective action.

“Procurement process” means any method used to obtain goods or services, land, leaseholds or concessions and includes, but is not limited to: bidding, competitive contracting, negotiations, request for proposals, expressions of interest, request for qualifications, requests for offerings or quotes.

"Proprietary" means goods or services of a specialized nature that are protected by trademark, patent or copyright or made, produced or distributed by one vendor or manufacturer. Specifications are proprietary if they are restricted to a brand name product.

“Shall” denotes the imperative.

“Sole source provider contract” means a contract awarded for goods or services when the provider is the only available source of the goods or services.

“Third party contract” means a contract between two or more parties, the performance of which is intended to benefit directly a third party. Examples include: Department of Human Services (DHS) contracts with a vendor to provide services for non-employees of the department eligible for those services and Department of Corrections (DOC) contracts with a vendor to provide services for prisoners in halfway houses.

17:44-1.3 Independent Office of the State Comptroller

(a) OSC is in, but not of, the New Jersey Department of the Treasury. As such, it operates as an independent Office that promotes the integrity and transparency of government operations by, among other things, reviewing public contracts and conducting independent audits of covered entities in accordance with Generally Accepted Government Auditing Standards.

(b) The State Comptroller is the administrator of OSC and is appointed by the Governor, with the advice and consent of the Senate.

(c) OSC coordinates audit functions, investigations and performance reviews with the following entities: Department of Law and Public Safety, Department of Education, Department of the Treasury, Department of Transportation, Division of Local Government Services in the Department of Community Affairs, Local Finance Board and Office of the State Auditor.

17:44-1.4 Establishment and functions of the Audit Division

(a) There is established within OSC an Audit Division. The Audit Division, among other functions, conducts research and performs preliminary evaluations which may lead to recommendations regarding the need for an audit; conducts performance audits of the Executive Branch of State government, including all entities exercising executive branch authority, public institutions of higher education and independent State authorities; and conducts performance audits of local government units and boards of education.

(b) The Audit Division conducts audits that assess the performance and management of the programs of covered entities. The Audit Division also provides guidance concerning the procurement of auditors by covered entities.

(c) OSC is a recognized sponsor of continuing professional education by the National Registry of Continuing Professional Education Sponsors and provides training through in-house programs and outside conferences in accord with the Generally Accepted Government Auditing Standards promulgated

by the U.S. Government Accountability Office. OSC training qualifies toward auditors' bi-annual mandatory 80 hours of continuing professional education credits.

17:44-1.5 Establishment and functions of the Procurement Division

(a) There is established within OSC a Procurement Division. The Procurement Division monitors and reviews the solicitation and award process for contracts under OSC's jurisdiction to ensure that those processes comply with applicable public contracting laws, rules, regulations and policies. The Procurement Division provides guidance, in the context of its reviews, to contracting units regarding appropriate procurement processes.

(b) In response to specific complaints, audit referrals or contract reviews, OSC may investigate to gather additional information regarding the procurement process, contract award process and financial management and performance of contracting units.

SUBCHAPTER 2. AUDIT DIVISION

17:44-2.1 Timely notice of certain audits required

(a) Covered entities shall provide OSC with copies of their periodic financial audits upon their receipt.

(b) State officials, including the Commissioner of Education and the Director of the Division of Local Government Services in the Department of Community Affairs, shall notify OSC of any local audits submitted to their agencies that reveal significant deficiencies as determined in the audits as required by N.J.S.A. 52:15C-9.

17:44-2.2 Authority to audit or review contract records

(a) Relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).

(b) As of (the effective date of these rules), all covered entities shall insert the following language in any new contract:

“(The contract partner) shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.”

17:44-2.3 Requirements for record retention and production

Where applicable, all covered entities shall comply with record retention schedules as established by the State Records Committee pursuant to the Public Records Law, N.J.S.A. 47:3-20 et seq. If a covered entity is not subject to N.J.S.A. 47:3-20 et seq., then relevant records shall be maintained for a period of no less than five years after contract completion. When requested, any covered entity shall produce any record for audit or review by OSC.

17:44-2.4 Criteria for audit determination

OSC determines the frequency with which performance audits shall be conducted of covered entities through the analysis of objective criteria as set forth in N.J.S.A. 52:15C-8(c).

17:44-2.5 Audit standards

OSC audits are conducted in accordance with Generally Accepted Government Auditing Standards issued by the U.S. Government Accountability Office.

17:44-2.6 Audit process

The audit process typically includes an opening conference, an audit survey, field work, review of preliminary findings with the covered entity's officials, an exit conference and the issuance of the audit report.

17:44-2.7 Audit reports

(a) The head of the audited covered entity is provided a draft audit report for their formal response. If it chooses to do so, the audited covered entity may respond formally with its official position concerning the audit findings and recommendations. This response is typically included as an appendix to the final audit report.

(b) Final audit reports are public documents and are posted on OSC's website. Final audit reports are issued to the Governor, the President of the Senate and the Speaker of the General Assembly.

17:44-2.8 Corrective action plan and monitoring of covered entities post-audit

(a) Following the distribution of the final audit report, the head of the audited covered entity shall report to OSC within 90 days stating the corrective action taken or underway to implement the recommendations

contained in the report and, when not implemented, the reason therefore. The Audit Division may follow up to review the implementation of the corrective action plan.

(b) OSC shall report to the Governor if a covered entity refuses to cooperate in proposing corrective action or fails to comply with a recommended corrective action plan. The Governor may withhold State funding to the covered entity or take other appropriate steps pursuant to N.J.S.A. 52:15C-11(d).

SUBCHAPTER 3. PROCUREMENT DIVISION

17:44-3.1 Timely notice of certain contracts required

(a) Contracting units shall notify the Procurement Division of the award of contracts valued at more than \$2 million but less than \$10 million no later than 20 business days after the contract award. The form for notice is provided on OSC's website at www.state.nj.us/comptroller.

(b) Contracting units shall notify the Procurement Division of anticipated contracts valued at \$10 million or more during the initial planning stages of the procurement process and before the contracting unit begins to draft the solicitation, request for proposals, concession offering, proposal to purchase, sell or lease real estate or similar contract-related documents, and in no event less than 30 days prior to any advertisement, negotiation or other solicitation.

(c) For procurements valued at \$10 million or more, OSC's 30-day review period commences when the contracting unit provides or otherwise makes available all requested documents and information as prescribed in N.J.A.C. 17:44-3.4. The form for notice is provided on OSC's website at www.state.nj.us/comptroller.

(d) For procurements in which multiple contracting units are involved, such as joint or cooperative agreements for goods or services pursuant to N.J.S.A. 40A:11-10 et seq., the contracting units shall designate an individual to represent all of the contracting units involved. The designated individual shall notify the Procurement Division of the procurement and provide all necessary documents and information.

(e) Contracting units shall provide the required documents and information electronically, if possible, to contracts@osc.state.nj.us or via mail to State of New Jersey, Office of the State Comptroller, 20 West State Street, P.O. Box 024, Trenton New Jersey 08625-0024. If documents are too large to send electronically or via mail, contracting units may provide the staff of the Procurement Division with the location at which the documents may be inspected.

17:44-3.2 Process by which contracting units shall determine the value of contracts; notice required when the value of contract changes

(a) When the exact value of a contract is uncertain, contracting units shall act in good faith to ascertain an estimated value using the following guidelines:

1. The individual(s) responsible for the procurement shall use professional judgment based on, but not limited to, prior procurements made by the contracting unit for similar goods or services.
2. The contract value is calculated as a whole, that is, the number of years times the yearly amount. Although potential contract extensions are not included in calculating the contract value at the time of estimating total contract value or at the time of the award, if an extension or amendment itself exceeds \$2 million, then notice is required at the time of extension.
3. Notice is required for change orders if the value of the particular change order exceeds \$2 million.

17:44-3.3 Documents and information required for contracts valued at more than \$2 million but less than \$10 million

(a) Contracting units shall notify the Procurement Division of contracts valued at more than \$2 million but less than \$10 million no later than 20 business days after the contract award. The form for notice is provided on OSC's website at www.state.nj.us/comptroller. The following documents and information shall be required:

1. The name of the contracting unit and the contract number, if applicable;
2. A description of the goods, services or other subject procured;
3. The cost of the goods, services or other subject procured;
4. The source(s) of funding for the contract;
5. A list of all State and Federal grant funds used for the contract and a brief description of any conditions and/or requirements of the grant funds, if applicable;
6. A description of the procurement process utilized to select the contract partner;
7. Citations to all relevant statutory, administrative and other sources of governing law and internal procurement policies;

8. The name and address of the contract partner awarded the contract and a brief justification for the award; and

9. The name, phone number and e-mail address of the employee of the contracting unit capable of responding to questions pertaining to the contract.

(b) The following documents and information are to be produced only if specifically requested by OSC:

1. A copy of the signed, executed contract, addenda to the solicitation and the resolution awarding the contract or minutes approving the contract award, if applicable;

2. A complete list of bids or proposals received and the name and address of each bidder, vendor or competitor;

3. Any documents explaining and approving a waiver from bidding requirements and documents explaining and approving the use of proprietary items;

4. Copies of any pre-award or post-award bid protests and any decisional documents that arise as a result of the protests; and/or

5. Standard specifications, technical specifications, special terms and conditions and standard terms and conditions, for example, affidavits and affirmative action documents.

17:44-3.4 Documents and information required for contracts valued at \$10 million or more

(a) Contracting units shall notify the Procurement Division of contracts valued at \$10 million or more at least 30 days prior to any advertisement, negotiation or solicitation. The form for notice is provided on OSC's website at www.state.nj.us/comptroller. The following documents and information shall be required:

1. The name of the contracting unit and contract number, if applicable;

2. A description of the goods, services or other subject to be procured;

3. The estimated cost of the goods, services or other subject to be procured and any documents evidencing how the estimated cost was obtained, such as a construction cost estimate or other cost analysis;

4. The estimated date of advertisement, negotiation or other solicitation;

5. The source(s) of funding for the contract;

6. A list of all State and Federal grant funds to be used for the contract and a brief description of any conditions and/or requirements of the grant funds, if applicable;
7. A description of the procurement process to be utilized to select the contract partner;
8. Citations to all relevant statutory, administrative and other sources of governing law and internal procurement policies;
9. A copy of the draft procurement documents such as the solicitation or request for proposals and any subsequent addenda or clarification that would change the bid or award process;
10. Any documents explaining and approving a waiver from bidding requirements and documents explaining and approving the use of proprietary items;
11. Standard specifications, special terms and conditions and standard terms and conditions, for example, affidavits and affirmative action documents; technical specifications only when specifically requested by OSC; and
12. The name, phone number and e-mail address of the employee of the contracting unit capable of responding to questions pertaining to the contract.

(b) Upon the completion of the bidding process and the award of a contract valued at \$10 million or more, contracting units shall provide the following additional documents and information to the Procurement Division within 20 business days of the award, notwithstanding OSC review prior to the advertisement, negotiation or other solicitation. The form for notice is provided on OSC's website at www.state.nj.us/comptroller. The following documents and information shall be required unless otherwise noted:

1. The name of the contracting unit and the contract number, if applicable;
2. The final cost of the goods, services or other subject procured;
3. The name and address of the contract partner awarded the contract and a brief justification for the award;
4. A copy of the signed, executed contract, any addenda to the solicitation and the resolution awarding the contract or minutes approving the contract award, if applicable;

5. A complete list of the bids or proposals received and the name and address of each bidder, vendor or competitor;

6. Copies of any pre-award or post-award bid protest and any decisional documents that arise as a result of the protest; and

7. The name, phone number and e-mail address of the employee of the contracting unit capable of responding to questions pertaining to the contract.

17:44-3.5 Process by which contracting units may request a waiver of the 30-day review period and OSC response

(a) Contracting units seeking to proceed with an advertisement before the expiration of the 30-day review period shall request a waiver of the time period in writing. Such contracting units shall provide any information required in N.J.A.C. 17:44-3.4 at the time the waiver is requested and the reason for the waiver request. Other documents shall be supplied as requested.

(b) Contracting units shall notify OSC of any subsequent addendum or clarification which would change the bid or award process from the process set forth in the documents presented to OSC in support of any waiver request, even if a waiver has been granted.

(c) OSC shall respond to waiver requests in writing.

17:44-3.6 Notice, documents and information required of State agencies that procure through the Department of the Treasury, Division of Purchase and Property (DPP)

(a) For procurements valued at \$10 million or more, State agencies that procure through the Department of the Treasury, Division of Purchase and Property (DPP) shall notify the Procurement Division in writing that they intend to send a request for procurement to DPP as soon as the agency begins preparing specifications or a request for proposals.

(b) DPP shall submit a notice of the planned procurement to the Procurement Division at least 30 days before advertising in accordance with N.J.A.C. 17:44-3.4.

(c) The Procurement Division shall notify both DPP and the applicable State agency if the proposed procurement is irregular and the advertisement cannot proceed.

(d) For contracts valued at more than \$2 million but less than \$10 million, DPP shall notify the Procurement Division no later than 20 business days after the contract award in accordance with N.J.A.C. 17:44-3.3.

17:44-3.7 Notice, documents and information required for renewals of third-party contracts valued at \$10 million or more

(a) For renewals of third-party contracts valued at \$10 million or more, notice shall be provided by the contracting unit to the Procurement Division no later than 60 days prior to the annual renewal date. Notice shall include the following:

1. A determination in accord with the contracting unit's guidelines that the vendor has performed in a satisfactory manner;
2. All information supplied by the vendor related to contract renewal;
3. A comparison of the contract terms for the renewal year and the prior year; and
4. A copy of the original contract, if available. If the original contract is not available, provide a brief, written history of the contract.

17:44-3.8 Additional documents and information required for cooperative purchasing, sole source provider or proprietary, emergency and professional services contracts valued at more than \$2 million

(a) Contracting units that plan to enter into, or have entered into, a cooperative purchasing agreement valued at more than \$2 million shall submit an award recommendation or briefly explain the reasons for using cooperative purchasing and provide documents evidencing any cost analysis conducted.

Governments using the cooperative purchasing requirements of a state contract need not provide such information.

(b) Contracting units that plan to enter into, or have entered into, a sole source provider contract or proprietary contract valued at more than \$2 million shall provide documents evidencing the justification for the award including an explanation addressing the lack of other vendors that can provide comparable products or services, any resolution of the governing body authorizing the use of proprietary goods and any completed waiver documentation. When determining if goods or services are sole source, contracting units shall abide by existing laws and rules limiting the use of the sole source exception, such as N.J.A.C. 5:34-2.2. Contracting units using a waiver from public bidding for contracts valued at \$10 million or more shall provide OSC with a copy of the waiver or resolution prior to contract award or execution.

(c) Contracting units that have entered into emergency contracts valued at more than \$2 million shall provide a brief explanation as to why the procurement was classified as an emergency, any related resolution from the governing body and any completed waiver.

(d) In any type of procurement for which an evaluation committee is appointed, including procurements for professional services and procurements using competitive contracting, a contracting unit shall maintain the list of persons participating on the evaluation committee, each person's qualifications, original documents evidencing the scoring by the evaluation committee, the committee's evaluation of the successful and unsuccessful vendors and any award recommendation. OSC may request such documents following award notice.

17:44-3.9 Confidentiality of documents and information submitted for contract review

(a) Information communicated for notice and review by or between contracting units and OSC is considered advisory, consultative or deliberative material for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., as amended and supplemented.

(b) Pursuant to N.J.S.A. 52:15C-10b(5), the Procurement Division may, within its discretion and after notifying the contracting unit, determine that information submitted for contract review should be part of a written determination designated as a public record for reasons of transparency, providing guidance or other public purpose.

17:44-3.10 Requirements for record retention and production

Where applicable, all contracting units shall comply with record retention schedules as established by the State Records Committee pursuant to the Public Records Law, N.J.S.A. 47:3-20 et seq. If a contracting unit is not subject to N.J.S.A. 47:3-20 et seq., then relevant records shall be maintained for a period of no less than five years after contract completion. When requested, any contracting unit shall produce any record for audit or review by OSC.

17:44-3.11 Completion of the contract review process and notification of any deficiencies found in procurement process or contracts

(a) For contracts valued at \$10 million or more, the Procurement Division shall notify the contracting unit in writing if the proposed procurement process is irregular and the advertisement cannot proceed.

(b) For contracts valued at more than \$2 million but less than \$10 million of which OSC was notified post-award, the Procurement Division may provide information to the contracting unit on ways in which

the procurement process or contract award process could be improved and any deficiencies cured, or take other appropriate action.